

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD J. HOLLEMAN,
TDCJ #297567,

Plaintiff,

v.

LT. MCKEE, *et al.*,

Defendants.

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CIVIL ACTION NO. H-05-0178

ORDER

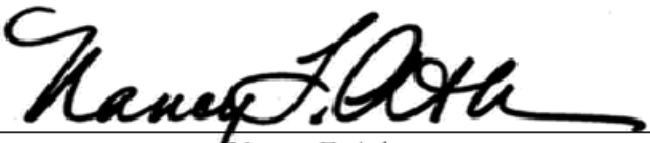
State inmate Ronald J. Holleman has filed suit under 42 U.S.C. § 1983, alleging that excessive force was used against him in violation of his civil rights. Pending before the Court is a motion by Holleman for a default judgment against the defendants, James McKee, James Burchell, and Kevin Simmons. (Docket Entry No. 29). For reasons set forth briefly below, the plaintiff's motion is denied.

Courts in this circuit follow a policy that favors resolving cases on the merits and against the use of default judgments. *See, e.g., Lindsey v. Prive Corp.*, 161 F.3d 886, 892-93 (5th Cir. 1998); *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989). Thus, it is well established that "[a] party is not entitled to a default judgment as a matter of right, even where the defendant is technically in default." *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996) (citing *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977)). The defendants have filed an answer in this case. (Docket Entry No. 30). Based on the information in the record, the answer was timely filed.

Therefore, it is **ORDERED** that Holleman's motion for a default judgment (Docket Entry No. 29) is **DENIED**.

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas, on **November 23, 2005**.



Nancy F. Atlas
United States District Judge